

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BAY BANK, a division of COWLITZ  
BANCORP, a state chartered bank, successor  
to ASIA, EUROPE, AMERICAS BANK,

Plaintiffs

v.

f/v, ORDER OF MAGNITUDE, O. N.  
959446, ITS Engines, Machinery,  
appurtenances, etc., IN REM;

and

RAY G. WADSWORTH, and LYDIA J  
WADSWORTH, et al.,

Defendants,

v.

THE 13<sup>TH</sup> REGIONAL CORPORATION,

Third Party

Defendants.

No. C05-5740RBL

ORDER DENYING  
MOTION TO DISMISS  
ARBITRATION CLAIMS

This matter is before the Court on the Motion of Third Party Defendant 13<sup>th</sup> Regional Corporation's Motion to Dismiss the "Arbitration Claims" alleged against it by Defendants and Third Party Plaintiffs Wadsworth, Peterson, Redman, and Johnston. [Dkt. #32] The underlying litigation involves a claim by Bay Bank against the Defendants (and a ship) seeking re-payment for a loan.

1 Defendants have in turn sued the 13<sup>th</sup>, arguing that it is obligated to indemnify them under the terms  
2 of a subsequent “Subscription Agreement.” Though they have initiated this aspect of the litigation, the  
3 Defendants/Third Party Plaintiffs seek primarily to force the 13<sup>th</sup> to arbitrate their claims against it. The 13<sup>th</sup>  
4 opposes this effort. Thus, the 13<sup>th</sup>’s “Motion to Dismiss Arbitration Claims” seeks not to force arbitration  
5 of the disputed claims, but instead to avoid arbitration by having this court dismiss the arbitration demand  
6 under Fed. R. Civ. P. 12(b)(6).  
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8 It is beyond dispute that the Subscription Agreement contains an arbitration clause. It provides in  
9 part that in the event of an unresolved dispute “either party may initiate binding arbitration by written  
10 notice to the other naming a single arbitrator [from JAMS or WAMS].”  
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12 The issue presented by the 13<sup>th</sup>’s Motion is a narrow one. The 13<sup>th</sup> argues that the  
13 Defendants/Third Party Plaintiffs are not parties to the Subscription Agreement, or the agreement to  
14 arbitrate claims contained in it. Accordingly, they argue, the Defendants/Third Party Plaintiffs’ claim to  
15 enforce the indemnity agreement against the 13<sup>th</sup> is not subject to arbitration. The Defendants/Third Party  
16 Plaintiffs respond that they are third party beneficiaries of the Subscription Agreement, as it expressly  
17 provides that the 13<sup>th</sup> will indemnify them personally.  
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19 Under Washington law, the creation of a third-party beneficiary contract requires that the parties  
20 intend that the promisor assume a direct obligation to the intended beneficiary at the time they enter into  
21 the contract. . . . If the terms of the contract necessarily require the promisor to confer a benefit upon a  
22 third person, then the contract, and hence the parties thereto, contemplate a benefit to the third person . . .  
23 . The “intent” which is a prerequisite of the beneficiary’s right to sue is “not a desire or purpose to confer a  
24 particular benefit upon him,” nor a desire to advance his interests, but an intent that the promisor shall  
25 assume a direct obligation to him. *See Lonsdale v. Chesterfield*, 99 Wn.2d 353, 361662 P.2d 385 (1983).  
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28 It is apparent that while the Defendants/Third Party Plaintiffs signed the Agreement only in their

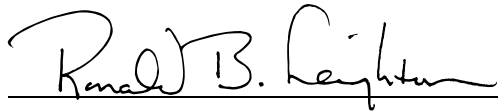
1 representative capacities, they were expressly made beneficiaries of some of its provisions, namely and  
2 specifically the indemnity provision. The agreement could have been clearer, but it is apparent that the  
3 individual Defendants/Third Party Plaintiffs have rights under it. Nonsignatories can enforce arbitration  
4 agreements as third party beneficiaries. *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9<sup>th</sup> Cir. 2006)  
5 (internal citations omitted).  
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7 For this reason, the 13th's Rule 12(b)(6) Motion to Dismiss the Defendants/Third Party Plaintiffs'  
8 "demand for arbitration" on the basis that they are not parties to the arbitration agreement is DENIED.  
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10 It is therefore ORDERED that

11 The Third Party Defendants' Motion to Dismiss Arbitration Claims [Dkt. #32] is DENIED.

12 DATED this 10<sup>th</sup> day of March, 2006.  
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17 RONALD B. LEIGHTON  
18 UNITED STATES DISTRICT JUDGE  
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